

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

DUBLIN DIVISION

ERUNTA KENNEDY,

Plaintiff,

v.

CV 322-059

WARDEN ANTOINE CALDWELL;
DEPARTMENT OF CORRECTIONS;
SGT. SCOTT; CERT OFFICER E GREEN;
DEPUTY WARDEN EDREGINALD
GIBBONS; COUNTY OF JOHNSON; and
OFFICER,

Defendants.

ORDER

Plaintiff, an inmate at Johnson State Prison (“JSP”) in Wrightsville, Georgia, is proceeding *in forma pauperis* (“IFP”) in this case filed pursuant to 42 U.S.C. § 1983. Because he is proceeding IFP, Plaintiff’s amended complaint must be screened to protect potential defendants. Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984); Al-Amin v. Donald, 165 F. App’x 733, 736 (11th Cir. 2006) (*per curiam*).

I. SCREENING THE COMPLAINT

Plaintiff names the following Defendants: (1) Warden Antoine Caldwell, (2) County of Johnson, (3) an unknown Gang Member Coordinator Officer, (4) C.E.R.T. Sgt. Scott, (5) Edeginald Gibbons, Deputy of Security, (6) C.E.R.T. Officer E. Green, and (7) Department of Corrections. (Doc. no. 1, pp. 1-2; doc. no. 15, pp. 1-3.) Taking all of Plaintiff’s allegations as true, as the Court must for purposes of the present screening, the facts as follows.

Plaintiff is a Level III inmate with diagnosed but unspecified mental health conditions. (Doc. no. 15, p. 13.) On August 27, 2020, between 8:45 and 9:30, Defendants Scott and Green maliciously and sadistically handcuffed and picked up Plaintiff, forcibly slamming him down and leaving him unconscious. (Id. at 5, 12.) Plaintiff was unable to defend or protect himself. (Id.) Defendant Gibbons not only witnessed the attack, but also encouraged and supported it. (Id.) Plaintiff was later denied immediate medical attention. (Id. at 5.) For relief, Plaintiff seeks PTSD treatment and \$2.5 million in compensatory and punitive damages. (Id.)

Liberally construing Plaintiff's allegations in his favor and granting him the benefit of all reasonable inferences to be derived from the facts alleged, the Court finds Plaintiff has *arguably* stated viable excessive force claims against Defendants Green, Scott, and Gibbons in their individual capacities. See Robinson v. Lambert, 753 F. App'x 777, 780 (11th Cir. 2018) ("For an excessive force claim, a pretrial detainee must show that the force used against him was objectively unreasonable." (citing Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015))).

The Court recommends dismissal of all claims against Defendants Caldwell, Department of Corrections, County of Johnson, and unknown Officer, as well as any official capacity claims for monetary damages against Defendants Scott and Gibbons. By this Order, the Court directs service of process for Plaintiff's excessive force claims against Defendants Scott, Green, and Gibbons.

II. INSTRUCTIONS

IT IS HEREBY ORDERED that service of process shall be effected on Defendants Green, Scott, and Gibbons. The United States Marshal shall mail a copy of the amended complaint, (doc. no. 15), and this Order by first-class mail and request that Defendants waive formal service of the summons. Fed. R. Civ. P. 4(d). Individual defendants have a duty to avoid

unnecessary costs of serving the summons, and if defendants fail to comply with the request for waiver, the defendants must bear the costs of personal service unless good cause can be shown for failure to return the waiver. Fed. R. Civ. P. 4(d)(2). Any defendant whose return of the waiver is timely does not have to answer the complaint until sixty days after the date the Marshal mails the request for waiver. Fed. R. Civ. P. 4(d)(3). However, service must be effected within ninety days of the date of this Order, and the failure to do so may result in the dismissal of any unserved defendant or the entire case. Fed. R. Civ. P. 4(m). Plaintiff is responsible for providing sufficient information for the Marshal to identify and locate Defendants to effect service.

IT IS FURTHER ORDERED Plaintiff shall serve upon the defendants, or upon their defense attorney(s) if appearance has been entered by counsel, a copy of every further pleading or other document submitted to the Court. Plaintiff shall include with the papers to be filed a certificate stating the date a true and correct copy of any document was mailed to the defendants or counsel. Fed. R. Civ. P. 5; Loc. R. 5.1. Every pleading shall contain a caption setting forth the name of the court, the title of the action, and the file number. Fed. R. Civ. P. 10(a). Any paper received by a District Judge or Magistrate Judge that has not been properly filed with the Clerk of Court or that fails to include a caption or certificate of service will be returned.

It is Plaintiff's duty to cooperate fully in any discovery that may be initiated by the defendants. Upon being given at least five days' notice of the scheduled deposition date, Plaintiff shall appear and permit his deposition to be taken and shall answer, under oath and solemn affirmation, any question that seeks information relevant to the subject matter of the pending action. Failing to answer questions at the deposition or giving evasive or incomplete responses to questions will not be tolerated and may subject Plaintiff to severe sanctions, including dismissal

of this case. The defendants shall ensure Plaintiff's deposition and any other depositions in the case are taken within the 140-day discovery period allowed by this Court's Local Rules.

While this action is pending, Plaintiff shall immediately inform this Court and opposing counsel of any change of address. Failure to do so will result in dismissal of this case.

Plaintiff must pursue this case; if Plaintiff does not press the case forward, the Court may dismiss it for want of prosecution. Fed. R. Civ. P. 41; Loc. R. 41.1. If Plaintiff wishes to obtain facts and information about the case from the defendants, Plaintiff must initiate discovery. See generally Fed. R. Civ. P. 26 through 37 (containing the rules governing discovery and providing for the basic methods of discovery). Plaintiff should begin discovery promptly and complete it within four months after the filing of the first answer of defendants named in the complaint screened herein.

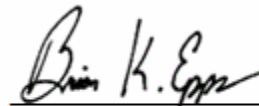
Interrogatories are a practical method of discovery for *pro se* litigants. See Fed. R. Civ. P. 33. Interrogatories shall not contain more than twenty-five questions. Id. Plaintiff must have the Court's permission to propound more than one set of interrogatories to a party. Discovery materials should not be filed routinely with the Clerk of the Court; exceptions include when the Court directs filing; when a party needs such materials in connection with a motion or response, and then only to the extent necessary; and when needed for use at trial. If Plaintiff wishes to file a motion to compel pursuant to Fed. R. Civ. P. 37, he should first contact the attorneys for the defendants and try to work out the problem; if Plaintiff proceeds with the motion to compel, he should also file a statement certifying that he has contacted opposing counsel in a good faith effort to resolve any dispute about discovery. Loc. R. 26.5.

Plaintiff must maintain a set of records for the case. If papers are lost and new copies are required, these may be obtained from the Clerk of the Court at the standard cost of fifty cents per

page. Under this Court's Local Rules, a party opposing a motion to dismiss shall file and serve his response to the motion within fourteen days of its service. "Failure to respond shall indicate that there is no opposition to a motion." Loc.R. 7.5. Therefore, if Plaintiff fails to respond to a motion to dismiss, the Court will assume that there is no opposition to the defendants' motion and grant the dismissal.

A response to a motion for summary judgment must be filed within twenty-one days after service of the motion. Loc. R. 7.5, 56.1. A failure to respond shall indicate that there is no opposition to the motion. Loc. R. 7.5. Furthermore, each material fact set forth in defendants' statement of material facts will be deemed admitted unless specifically controverted by an opposition statement. Should defendants file a motion for summary judgment, Plaintiff is advised that he will have the burden of establishing the existence of a genuine issue as to any material fact in this case. That burden cannot be carried by reliance on the conclusory allegations contained within the complaint. Should defendants' motion for summary judgment be supported by affidavits, Plaintiff must file counter-affidavits if he desires to contest the defendants' statement of the facts. Should Plaintiff fail to file opposing affidavits setting forth specific facts showing that there is a genuine issue for trial, the consequences are these: any factual assertions made in the defendants' affidavits will be accepted as true and summary judgment will be entered against Plaintiff pursuant to Fed. R. Civ. P. 56.

SO ORDERED this 14th day of September, 2022, at Augusta, Georgia.


BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA